

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Art Unit: 3744
Applicants: John E. Davis, et al.
Title: FLUID ABSORBENT ARTICLE FOR SURGICAL USE
Atty. Doc.: TRIL-05

Cincinnati, Ohio 45202

June 29, 2010

MAIL STOP
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

U.S. Patent No. 6,603,052

**STATEMENT OF SHOWING THAT THE DELAY IN TIMELY PAYMENT OF THE
MAINTENANCE FEE FOR THE EXPIRED PATENT WAS UNAVOIDABLE,
PURSUANT TO 37C.F.R. §1.378(b)**

U.S. Patent No. 6,603,052 issued on August 5, 2003. It was originally set to expire on May 25, 2021. The first maintenance fee for the '052 Patent was due on February 5, 2007. That maintenance fee was not paid at that time by the owner of the Patent. On September 22, 2009, one of the inventors and the owner, John E. Davis, contacted the law firm of Wood, Herron & Evans, 441 Vine Street, 2700 Carew Tower, Cincinnati, OH 45202, and spoke with the undersigned, Mr. Kurt A. Summe, regarding the '052 Patent. Mr. Davis indicated that on September 22, 2009, he had just pulled out of a file the original '052 Patent, as well as a letter sent by Wood, Herron & Evans accompanying the original '052 Patent since it had been originally received from Wood, Herron & Evans.

That was the first time that Mr. Davis recalls seeing the original Patent or any accompanying correspondence regarding the Patent. Mr. Davis then noted the language regarding payment of the maintenance fees from a letter from Mr. Summe with the Patent. Mr. Davis did not pay the maintenance fee. Mr. Summe advised Mr. Davis in the telephone call that the maintenance fee had not been paid. Wood, Herron & Evans had not arranged for payment of the maintenance fee absent communications with the Patent owner or any instructions to do so from the owner of the Patent, and thus, the '052 Patent was expired for non-payment of maintenance fees.

Mr. Davis indicated that he wanted to revive the Patent and pay the maintenance fee due. In reviewing the issuance date, the maintenance fee date, and the current date of September 22, 2009, it was concluded that, for revival of the '052 Patent in acceptance of a delayed payment of the maintenance fee to reinstate the '052 Patent, a sufficient showing would have to be made that the delayed payment was unavoidable. On September 25, 2009, Mr. Summe again spoke with Mr. Davis and noted that Mr. Davis was going to have to investigate the facts regarding the owner of the Patent, the actions of the owner, and provide information surrounding the '052 Patent, the maintenance fees, and other issues in order to determine that the delay of the payment was unavoidable. Mr. Summe noted it was not sufficient to simply pay the maintenance fee and any grantable Petition would require such a showing that the delay was unavoidable.

At that time, Mr. Davis had no recollection of any facts surrounding the original Patent and the maintenance fee issues, as he had suffered a stroke around the time the '052 Patent issued. He still suffers from effects of that stroke and memory issues along

with significant heart failure health issues. As set forth in the attached supporting Declaration of Mr. John E. Davis, the tasks of recollecting and determining the string of events has proven to be a somewhat arduous and drawn-out process as the stroke suffered by Mr. Davis was a significant stroke, which has impaired not only his memory with respect to the facts surrounding the time of the issuance of the '052 Patent in August, 2005, but also still continues to impair his memory and day-to-day functioning involving events and details. Furthermore, around the middle of 2006, Mr. Davis began having heart problems, which became severe in early, 2007. Since that time, he has had three heart surgeries, and has been stabilized with heavy medications and a much-restricted physical activity level. He is currently suffering from heart failure.

As such, while Mr. Davis has worked as diligently as possible to locate and go through various files in numerous different locations to try to reconstruct the facts, it has taken a significant amount of time from his initial discovery of the original Patent on September 22, 2009 to obtain as many facts as possible surrounding the unavoidable circumstances of the delayed or late payment of the first maintenance fee for setting forth a sufficient showing. He has little or no recollection of facts surrounding the original issuance of the '052 Patent, has had to find or otherwise locate and go through all personal files and corporate files from that time frame, and is severely limited in his daily physical exertion due to his heart issues. Mr. Davis has spent the past months trying to slowly piece together the facts surrounding the '052 Patent, the ownership of the Patent, any involvement of the other inventor Mr. Klonne, and maintenance fee issues. This task has taken considerable time due to his health and loss of memory. On May 6, 2010, after those significant efforts and discussions with Mr. Summe, Mr.

Davis concluded that he had exhausted the majority of those efforts in piecing together the facts and chronology and was not aware of any further documents or records he could review or avenues he could pursue in determining any additional helpful facts surrounding this issue. In speaking with Mr. Summe, a decision was made to file this Petition with the facts as were determined and those are enclosed herein in this Showing. The Petition is thus, filed promptly upon the exhaustion of the process on May 6, 2010 that was necessary to file the Petition and provide the proper showing along with payment of the first maintenance fee.

Initially, the '052 Patent, which was co-owned by Mr. Davis and Mr. Tim Klonne as the co-inventors, was to be assigned to a corporate entity. That apparently never occurred. That corporate entity was dissolved around the time of the Patent issuance. Through the review of files as noted further below, Mr. Davis was not able to uncover any executed Assignment document to the former corporate entity TollamCo, Corp. No assignment to TollamCo, Corp. was recorded at the U.S. Patent and Trademark Office regarding the '052 Patent. It initially appeared that the '052 Patent was owned individually by the two named inventors, Mr. John E. Davis and Mr. Timothy P. Klonne.

Mr. Summe discussed the issue of efforts made by the two inventors, Mr. Davis and Mr. Klonne to pay the maintenance fee, and indicated that, to establish the unavoidable nature of the delayed payment of the maintenance fee, the records needed to be further examined to determine what efforts were taken by the two inventors individually for payment of the maintenance fee. Because of his loss of memory, Mr. Davis has continued to try to contact Mr. Klonne, who could not be contacted, or would not respond. However, through further searching and reviewing of the corporate

records, Mr. Davis was able to determine that he is the sole owner of the '052 Patent through an Assignment. Accordingly, Mr. Davis was the only entity, corporate or individual, who was responsible for payment of the maintenance fees for the '052 Patent.

When the original '052 Patent was sent to Mr. Davis, it was sent to an address other than the corporate address for TollamCo, Corp. where Mr. Davis was receiving assistance. At that time, the original Patent was sent to Mr. Davis, who was somewhat mentally and physically incapacitated due to the stroke, and was not working at TollamCo, Corp. The invention was sent to an address, at 223 Congress Street, New Richmond, OH 45205, which is the location of Mr. Davis' daughter. At that time, the original '052 Patent was apparently placed in a file drawer at another location by someone other than Mr. Davis, with some other files of TollamCo, Corp. that were located at that site, and remained with those files, hidden from Mr. Davis' sight and memory until they were discovered September 22, 2009. Mr. Davis indicates that, up to the point of discovering the original Patent document, he was generally knowledgeable that there was a Patent. Mr. Davis does not recall having seen or read neither the original '052 Patent document noting payment of maintenance fees, nor the letter from Wood, Herron & Evans regarding such maintenance fees. Nor was he aware that they were buried in the archived corporate documents. The original documents had gone directly to a file when Mr. Davis was incapacitated.

Accordingly, as the owner of the '052 Patent, Mr. Davis hereby Petitions for acceptance of a delayed payment of the maintenance fee to reinstate U.S. Patent No. 6,603,052 as the lack of payment was truly unavoidable. Further details and support from the attached Declarations of Mr. Davis, Mr. Kurt A. Summe, and Ms. Gretchen Franck, the Docketing Administrator of Wood, Herron & Evans, are set forth below in a more detailed and chronological fashion below.

Chronology of Events

On May 25, 2001, John E. Davis and Timothy P. Klonne applied for a Patent for a Fluid Absorbent Article for Surgical Use. Mr. Davis and Mr. Klonne were partners in an Ohio corporation named TollamCo, Corp. doing business at 7195 East Kemper Road and 7131 East Kemper Road in Cincinnati, OH 45209. (Davis Declaration Paragraph 1.) The Patent application was filed and prosecuted by Mr. Kurt A. Summe of the Firm of Wood, Herron & Evans, 441 Vine Street, 2700 Carew Tower, Cincinnati, OH 45202 (Summe Declaration Paragraph 9).

During prosecution, on September 24, 2001, Mr. Summe received a note and corporation documents from Mr. Davis indicating that the two inventors wished to assign the Patent to TollamCo, Corp. (Summe Declaration Paragraph 10). On September 27 2001, Mr. Summe forwarded an Assignment to Mr. Davis at TollamCo, Corp. (Summe Declaration Paragraph 10). On November 26, 2001, in further correspondence to Mr. Davis and Mr. Klonne, Mr. Summe indicated he had not yet received the executed Assignment (Summe Declaration Paragraph 10). No executed Assignment document

was received by Mr. Summe from Mr. Davis and Mr. Klonne that assigned their rights to TollamCo, Corp. No Assignment document was recorded at the U.S. Patent Office by Mr. Summe regarding the '052 Patent. (Summe Declaration Paragraph 10).

The Application proceeded through prosecution and was formally allowed pursuant to a Notice of Allowance dated March 11, 2003. The Issue Fee was paid on June 6, 2003, and a Patent issued as U.S. Patent No. 6,603,052 on August 5, 2003 ('052 Patent History).

On May 7, 2003, shortly before payment of the Issue Fee in the '052 Patent, Mr. Davis suffered a significant stroke (Davis Declaration Paragraph 8). Pursuant to that stroke, Mr. Davis lost his short-term memory, was incapacitated in his day-to-day functions and was not able to work any longer. In addition to the short-term memory loss, a degraded ability in facial recognition, and a significantly slowed thought process. He quit working day-to-day in the business of TollamCo, Corp. at that time, and was confined to his son's home at 804 Maple Avenue, Newport, Kentucky 41071. (Davis Declaration Paragraph 8.)

Earlier, on or around May 1, 2003, the doors to TollamCo, Corp. at East Kemper Road, Cincinnati, were closed. From approximately May, 2003 to November, 2003, liquidation progressed for TollamCo, Corp. (Davis Declaration Paragraph 7.) Mr. Davis remained incapacitated from the May 7, 2003 stroke until approximately October, 2003 (Davis Declaration Paragraph 9).

Pursuant to the business liquidation, it was apparently agreed between Mr. Davis and Mr. Klonne that corporate records of TollamCo, Corp. would be maintained by Mr. Davis because Mr. Davis has those archived records (Davis Declaration Paragraph 11).

The corporate records were moved to Blue Horizon, Inc. at 1024 Saratoga Street, Newport, KY 41071, which was a company owned by Mr. Davis' daughter (Davis Declaration Paragraph 14).

On August 8, 2003, Mr. Summe forwarded to Mr. Davis, at the 223 Congress Street, New Richmond, OH 45205 address, the original '052 Patent. The 223 Congress Street address is the address of Mr. Davis' daughter, who was assisting him (Davis Declaration Paragraph 14). The letter noted that the '052 Patent would expire May 25, 2021, and that maintenance fees were due 3½, 7½, and 11½ years from the issued date of the '052 Patent. (Summe Declaration Paragraph 13.) The letter also indicated that Wood, Herron & Evans would attempt to notify the Patent owner on the 3rd, 7th, and 11th anniversaries as a reminder of the need to pay the maintenance fees and the amount of the fees (Summe Declaration Paragraph 13).

Someone at the Blue Horizon, Inc. address of 223 Congress Street, New Richmond, OH 45205, received the original Patent, and put it into the files at the Blue Horizon, Inc. address in Newport, KY on Mr. Davis' behalf, as Mr. Davis was not working at that time. Mr. Davis does not recall getting, seeing, or reading the original Patent. He does not recall any of the circumstances regarding the original Patent document being filed into archived corporate files (Davis Declaration Paragraph 14.)

The original Patent Certificate and cover letter from Mr. Summe remained in the files from that time, unseen by Mr. Davis. Ultimately, those files were moved to the facilities of Newport Converting, which is another corporate entity owned by Mr. Davis' daughter. The hidden original Patent and letter remained there.

Since Mr. Davis did not receive and file the original Patent and, given his condition, he did not have a reasonable opportunity to even note the issue of maintenance fees being due or to docket such dates in files, or in a business calendar at the time the Patent was issued. He was struggling with just day-to-day functioning. (Davis Declaration Paragraph 15.)

Also, because the TollamCo, Corp. was out of the business, no one affiliated with the corporation would have had the responsibility for attending to the Patent or to the maintenance fees and dates. There was no corporate docketing system maintained for the maintenance of intellectual property like the '052 Patent. Mr. Davis, therefore, did not have a chance, either individually or in a corporate capacity, to attend to the '052 Patent and its maintenance or have someone do so. (Davis Declaration Paragraph 16.)

On September 22, 2009, Mr. Davis randomly discovered the original Patent Certificate and the cover letter when going through old files. At that time, the efforts began to pay the maintenance fee with a Petition and to try to establish the facts surrounding the late maintenance fee, and Mr. Davis' efforts in that regard so that a suitable and grantable Petition might be made setting forth the unavoidable situation regarding the late payment of the maintenance fees.

Upon calling Mr. Summe on September 22, 2009, Mr. Summe indicated that he would obtain the file history associated with the '052 Patent (Summe Declaration Paragraph 5). At that time, Mr. Summe obtained copy of the '052 Patent, and looked at the issue to calculate the first maintenance fee due date of February 5, 2007 (Summe Declaration Paragraph 5). It was then determined that a six-month grace period was available taking the date of the first maintenance fee payment out to August 5, 2007. In

reviewing 37 C.F.R. §1.378(b) and Section 2590 in the Manual of Patent Examination Procedure (MPEP) regarding the late payment of maintenance fees, Mr. Summe determined that, as of September 22, 2009, Mr. Davis was beyond the twenty-four months following the six-month grace period for the '052 Patent in which to file a Petition to Accept an Unintentionally Delayed Payment of the First Maintenance Fee. (Summe Declaration Paragraph 5.) Mr. Summe then advised Mr. Davis that the maintenance fee could not just be paid late and that it would be necessary for Mr. Davis to provide facts regarding how the delayed payment was unavoidable, given the situation surrounding that issue.

On September 25, 2009, Mr. Summe contacted Mr. Davis and discussed on the phone the “unavoidable” standard under which the Petition must be filed, and Mr. Davis then began to work in trying to gather the facts surrounding the Patent, the two inventors, the TollamCo, Corp., the location of the original Patent and the issue of the maintenance fees (Summe Declaration Paragraph 6). To the date of filing this Petition, Mr. Summe has worked with Mr. Davis in the arduous and difficult task in trying to determine the various facts surrounding the delayed payment of the maintenance fee (Davis Declaration Paragraph 4)/(Summe Declaration Paragraph 6). This task has taken a significant amount of time because of the mental and physical incapacitation of Mr. Davis in being able to remember any facts associated with the time frame of the issuance of the Patent and the deadline for paying the first maintenance fee (Davis Declaration Paragraphs 5, 8, 13).

Essentially, Mr. Davis has had to try to find and then go back carefully through records that are over five years old and scattered around at various corporate locations to try to piece together, to the best of his ability, what occurred. Since suffering his stroke in May of 2003, Mr. Davis has worked to go from remember for less than one minute to retaining memory for up to at least a waking day. (Davis Declaration Paragraphs 10-12.) To this day, Mr. Davis does not generally hold overnight thoughts, and therefore has to refresh his memory each day (Davis Declaration Paragraph 12). Mr. Davis is still highly-dependent upon written notes, his calendar, and other outside people and/or services to maintain any organization or order in his daily life (Davis Declaration Paragraph 12). Furthermore, Mr. Davis suffers from significant heart problems.

More specifically, in 2002, Mr. Davis was diagnosed with heart disease that progressed. In early 2007, Mr. Davis' heart disease became severe and in May, 2007, he suffered a rapid and irregular heartbeat that could not be controlled. (Davis Declaration Paragraph 10.) He has since had three heart surgeries. On January 7, 2007, he had the first heart surgery, which was an unsuccessful catheter ablation to control the rapid heartbeat. On December 7, 2007, he had another heart surgery to control the rapid heartbeat. On October 20, 2008, he had his third heart surgery for to implant an internal cardiac defibrillator and pacing device. He is suffering from heart failure and has been stabilized with heavy medications and a significantly-restricted physical activity level. (Davis Declaration Paragraph 10.)

Therefore, Mr. Davis has had a difficult time in accessing and reviewing the various documents to put together the time line and facts surrounding the '052 Patent and maintenance fees. Mr. Davis' daughter and wife have assisted in this regard; however, it is necessary for Mr. Davis to indicate that the documents are relevant, and also to review those documents to refresh his memory and have some understanding of the time frames at issue. (Davis Declaration Paragraph 13.) Furthermore, it has been necessary for Mr. Davis to meet with several doctors, including his cardiologist, neurologist, and general physician, in order to review their various records and discern the time frames associated with his various medical problems and his condition around the time of the issuance of the Patent (Davis Declaration Paragraph 13).

Mr. Tim Klonne is listed as an inventor on the Patent. In that role, he would originally be an owner of the Patent. Therefore, Mr. Davis was asked to try and discern the current relation of Mr. Klonne with the '052 Patent and to determine whether he had taken any reasonable steps to pay the maintenance fees. (Summe Declaration Paragraph 8.) Mr. Summe did not record any Assignment for Mr. Davis and Mr. Klonne, and the Patent Office records did not indicate any corporation ownership of the '052 Patent. (Summe Declaration Paragraphs 7, 10).

Since the bankruptcy, Mr. Klonne has had nothing to do with the old business or business remnants of the defunct TollamCo, Corp. Efforts by Mr. Davis to get information from Mr. Klonne have failed. Mr. Davis therefore reviewed the corporate documents and files to determine the role of Mr. Klonne with the Patent. (Davis Declaration Paragraph 18.)

In the extensive review of those files and this issue of Mr. Klonne around the time frame of the prosecution and issuance of the '052 Patent, Mr. Davis was not able to locate any executed corporate Assignment document wherein Mr. Davis and Mr. Klonne assigned their rights to TollamCo, Corp (Davis Declaration Paragraph 19).

Through the review process Mr. Davis found a note he had earlier placed in some files about a telephone conversation with Mr. Klonne. The note is dated August 14, 2003. (Davis Declaration Paragraph 21.) Mr. Davis does not remember the phone call (Davis Declaration Paragraph 20). From that note, Mr. Davis had apparently paid the original Issue Fee or was going to pay the Issue Fee with the thought of having Mr. Klonne pay one-half, as Mr. Klonne was a partner in the TollamCo, Corp. and the Patent. Mr. Davis must have spoken with Mr. Klonne regarding the fee or finalizing the business of TollamCo., Corp (Davis Declaration Paragraph 20). Mr. Klonne apparently indicated that he was not interested in the '052 Patent, and would not participate in paying the Issue Fee. Mr. Klonne verbally assigned any rights or interest he had in the '052 Patent to me. Therefore, Mr. Klonne would have no ownership in the Patent. (Davis Declaration Paragraphs 20-22.)

Therefore, John Davis is the sole owner of U.S. Patent No. 6,603,052. The other inventor, Mr. Klonne, would not have had any duty or obligation to address any maintenance fee issues with respect to the Patent. Therefore, Mr. Klonne would not have thought that it was necessary for him to take any reasonable action or to engage with Mr. Davis regarding the '052 Patent or maintaining the Patent. Accordingly, any action or inaction by the other inventor, Mr. Klonne, would be irrelevant in this regard, with respect to the unavoidability of the late payment of maintenance fees.

As Mr. Davis was not aware of the original Patent document or the correspondence therewith regarding maintenance fees since they were buried in archived corporate files, he did not know such maintenance fees were to be paid (Davis Declaration Paragraph 23). He would, therefore, not have known to take any reasonable steps to pay the maintenance fee.

The law firm of Wood, Herron & Evans offers the service of assisting Patent owners in the payment of maintenance fees on Patents if the owners of a Patent so desire (Franck Declaration Paragraph 3). Various of the clients of Wood, Herron & Evans handle maintenance fees in different ways. Some clients pay their own maintenance fees, some clients contact Wood, Herron & Evans to assist in paying the fees, and some clients have other firms handle the payment of their maintenance fees. (Franck Declaration Paragraph 5.)

With respect to the payment of the 4 year maintenance fees for USA Patent 6,603,052, Wood Herron & Evans sent an initial reminder letter on October 24, 2006 to the corporation, TollamCo, Corp. asking for instructions from the Patent owner (Franck Declaration Paragraph 3).

At the time of the sending of this letter, our internal computer records indicated their corporate address was the E. Kemper Road, Cincinnati address and the letter was sent to that address (Franck Declaration Paragraph 3).

The letter contained information concerning the payment of maintenance fees. The initial letter was not returned to Wood, Herron & Evans by the USPS as undeliverable, and Wood, Herron & Evans heard nothing further from Mr. Davis, Mr. Klonne, or TollamCo, Corp. (Franck Declaration Paragraph 3.) In the letter, patent

owners are asked to indicate whether or not they wish Wood Herron & Evans to handle the payment of the maintenance fees. Instructions are requested as often Patent owners choose to handle the payment of these maintenance fees directly with the U.S. Patent and Trademark Office in order to save money. (Franck Declaration Paragraph 4.)

Mr. Davis did not receive the October 2006 letter (Davis Declaration Paragraph 25). Therefore, Mr. Davis, as the sole owner of the Patent, could not provide instructions because he did not know such instructions were requested.

When instructions from the Mr. Davis, Mr. Klonne, or TollamCo, Corp were never received in conjunction with the letter dated October 24, 2006, another letter was sent dated February 9, 2007. This letter was sent via certified U.S. mail because there was no ongoing contact with the either Mr. Davis, Mr. Klonne, or TollamCo, Corp regarding any ongoing legal matters or the payment of maintenance fees after the issuance of this Patent. (Franck Declaration Paragraph 5.) Wood, Herron & Evans indicated in that February 9, 2007 letter that they would not pay the maintenance fees unless they received explicit instructions from the client to do so. The letter dated February 9, 2007 was returned marked by the USPS as undeliverable/unable to forward. As a result of not having instructions to pay the first maintenance fees, the fees were not paid. (Franck Declaration Paragraphs 5-6.)

Mr. Davis did not receive the February 2007 letter either (Davis Declaration Paragraph 25). Therefore, Mr. Davis, as the sole owner of the Patent, would not have had any reason at that point to take reasonable steps toward payment of the maintenance fee.

Accordingly, because of the facts surrounding the original issuance of the Patent and the stroke of Mr. Davis, the sole owner of that '052 Patent, Mr. Davis did not and indeed could not know that maintenance fees were due for that Patent. He therefore could not reasonably have been expected to create a calendar or docket at that time for the future maintenance fee deadlines or to take other steps regarding the payment of the maintenance fee. Mr. Davis could not do so as he was not even aware of the Patent document or the correspondence associated therewith when the Patent was originally sent. He did not recall seeing the original Patent document until long after the Patent was issued. Since he apparently never handled the original Patent and it was filed away without his knowledge, he would not have known to even look for such a Patent document or to review that Patent document or to consider the issue of maintenance fees.

There was no TollamCo corporate entity that Mr. Davis could have reasonably relied upon to calendar or docket the deadlines associated with the payment of maintenance fees for the '052 Patent or any intellectual property. The corporate entity was gone. Mr. Klonne had no involvement in the Patent or any ownership therein.

Mr. Davis owns a single Patent. This was the first maintenance fee. He had never owned a Patent before or paid maintenance fees before on the '052 Patent or any Patent. (Davis Declaration Paragraph 26.) Mr. Davis has not pursued other patents, and thus, had no ongoing business relationship with Wood Herron & Evans or other Patent firms (Davis Declaration Paragraph 26). He did not receive any correspondence

from Wood, Herron & Evans or any other firm to further provide any knowledge, guidance or reminder to Mr. Davis regarding the payment of maintenance fees (Davis Declaration Paragraph 26).

Mr. Davis relies significantly upon other people and calendars in his daily life. Because he was not aware of the original Patent and the maintenance fee issue, he did not have a reasonable opportunity to calendar the necessary dates, nor have someone close to him, such as his wife or daughter, to calendar those dates to remind him. When the time to pay the first maintenance fee arose, Mr. Davis had no reasonable chance to even take any steps to pay that fee. Therefore, missing the original deadline for payment of the first maintenance fee and the delay in timely payment of the maintenance fee could not be avoided. Under the circumstances, Mr. Davis' actions are as reasonable as can be expected given his lack of knowledge of the Patent and the maintenance fee issues. He apparently did not see or handle the original Patent document and it was filed away without his knowledge into archived files of a corporate entity that no longer existed. His frail mental capacity at the time and continuing effects of his stroke and other health issues have only lessened Mr. Davis' chances of having taken steps to pay the maintenance fee.

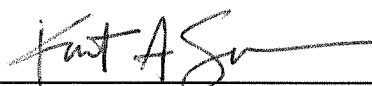
This Petition is filed promptly after Mr. Davis had completed the arduous task of piecing together facts, physical documents and a factual and mental timeline of what occurred in this process. As the unavoidably-delayed payment of the maintenance fee required an indication of such facts as noted herein

regarding the circumstances surrounding the late payment of the maintenance fee, such an arduous task and the time associate therewith were necessary for putting together this showing for the purposes of a grantable Petition under 37 C.F.R. §1.378(b).

Applicant is submitting the fee due for this Petition and the maintenance fees. If any additional fees are necessary, the Commissioner may consider this to be a request for such and charge any necessary fees to deposit account 23-3000.

Respectfully submitted,

WOOD, HERRON & EVANS, L.L.P.

A handwritten signature in black ink, appearing to read "Kurt A. Summe", written over a horizontal line.

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